

Assembly Bill No. 1316

CHAPTER 314

An act to amend Section 32128 of the Health and Safety Code, relating to health facilities.

[Approved by Governor September 18, 2006. Filed with
Secretary of State September 18, 2006.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, Salinas. Hospital districts: hospital rules: indemnification.

The existing Local Health Care District Law prescribes procedures for the formation and organization of hospital districts, and specifies the powers and duties of those districts. The law requires that the rules of a hospital, established by the board of directors, include specified provisions pertaining to the operation of the hospital and appointment of hospital medical staff, as provided.

This bill would authorize the board of directors to indemnify for damages and for costs associated with the legal defense of any nonemployee member of the medical staff when named as a defendant in a civil action directly arising out of opinions rendered, statements made, or actions taken as a necessary part of participation in the medical peer review activities of the district, as specified. The bill would authorize a district to pay that part of a judgment that is for punitive or exemplary damages against a nonemployee member of the medical staff arising out of participation in peer review activities, if the board of directors of the district, in its discretion, makes specified findings. By imposing new duties on hospital districts with respect to the implementation of new rules in hospitals, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) The participation of nonemployee members of hospital medical staff in the medical peer review activities of hospitals is critical to preserving the highest standards of hospital medical practice and patient care.

(b) Participation in medical peer review activities exposes nonemployee members of the health care district medical staff to the risk of involvement in civil actions arising out of those peer review activities.

(c) California hospitals have traditionally provided nonemployee physicians, serving as members of hospital peer review committees, with indemnification for damages and for costs associated with the legal defense of civil actions arising out of their peer review activities. However, a recent Attorney General's Opinion calls into question the specific authority of health care districts, pursuant to the local Health Care District Law (Division 23 (commencing with Section 32000) of the Health and Safety Code), to provide this indemnification.

(d) The risks and costs of involvement in litigation would make it extremely difficult for health care districts to obtain the participation of nonemployee members of their hospital medical staff in peer review activities. The loss of active peer review bodies would render district hospitals ineligible for certification by the Joint Commission on the Accreditation of Hospitals and Health Care Organizations, threaten district hospitals' contracts with liability insurance carriers, and their status as Medicare providers, and could potentially invalidate their contracts with numerous health plans.

(e) To ensure that nonemployee members of the medical staff will continue to participate in the medical peer review activities of health care districts, it is necessary for districts to provide conditional indemnification for damages and for costs associated with the legal defense of civil actions arising out of participation in those peer review activities.

SEC. 2. Section 32128 of the Health and Safety Code is amended to read:

32128. (a) The rules of the hospital, established by the board of directors pursuant to this article, shall include all of the following:

(1) Provision for the organization of physicians and surgeons, podiatrists, and dentists licensed to practice in this state who are permitted to practice in the hospital into a formal medical staff, with appropriate officers and bylaws and with staff appointments on an annual or biennial basis.

(2) Provision for a procedure for appointment and reappointment of medical staff as provided by the standards of the Joint Commission on Accreditation of Healthcare Organizations.

(3) Provisions that the medical staff shall be self-governing with respect to the professional work performed in the hospital; that the medical staff shall meet in accordance with the minimum requirements of the Joint Commission on Accreditation of Healthcare Organizations; and that the medical records of the patients shall be the basis for such review and analysis.

(4) Provision that accurate and complete medical records be prepared and maintained for all patients.

For purposes of this paragraph medical records include, but are not limited to, identification data, personal and family history, history of

present illness, physical examination, special examinations, professional or working diagnoses, treatment, gross and microscopic pathological findings, progress notes, final diagnosis, condition on discharge, and other matters as the medical staff shall determine.

(5) Limitations with respect to the practice of medicine and surgery in the hospital as the board of directors may find to be in the best interests of the public health and welfare, including appropriate provision for proof of ability to respond in damages by applicants for staff membership, as long as no duly licensed physician and surgeon is excluded from staff membership solely because he or she is licensed by the Osteopathic Medical Board of California.

(b) Notwithstanding any other provision of law, the board of directors may indemnify for damages and for costs associated with the legal defense of any nonemployee member of the medical staff when named as a defendant in a civil action directly arising out of opinions rendered, statements made, or actions taken as a necessary part of participation in the medical peer review activities of the district. This provision for indemnification for damages shall not include any award of punitive or exemplary damages against any nonemployee member of the medical staff. If the plaintiff prevails in a claim for punitive or exemplary damages against a nonemployee member of the medical staff, the defendant, at the option of the board of directors of the district, shall be liable to the district for all the costs incurred in providing representation to the defendant.

(c) Notwithstanding subdivision (b) or any other provision of law, a district is authorized to pay that part of a judgment that is for punitive or exemplary damages against a nonemployee member of the medical staff arising out of participation in peer review activities, if the board of directors of the district, in its discretion, finds all of the following:

(1) The judgment is based on opinions rendered, statements made, or actions taken as a necessary part of participation in the medical peer review activities of the district.

(2) At the time of rendering of the opinions, making the statements, or taking the actions giving rise to the liability, the nonemployee member of the medical staff was acting in good faith, without actual malice, and in the apparent best interests of the district.

(3) Payment of the claim or judgment against the nonemployee member staff would be in the best interests of the district.

(d) The rules of the hospital shall, insofar as consistent with this article, be in accord with and contain minimum standards not less than the rules and standards of private or voluntary hospitals. Unless specifically prohibited by law, the board of directors may adopt other rules which could be lawfully adopted by private or voluntary hospitals.

SEC. 3. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7

(commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

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